NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX
APPELLATE DIVISION

ALLANTON BROWN, Appellant, **v.** **VALLARIE GILLARD,** Appellee.	**D.C. CIV. APP. NO. 1999/148** Re: T.C. Civ. No. 165/1999

On Appeal from the Territorial Court of the Virgin Islands

Considered: December 6, 2002
Filed: January 21, 2003

BEFORE: **RAYMOND L. FINCH,** Chief Judge, District Court of the Virgin Islands; **THOMAS K. MOORE,** Judge of the District Court of the Virgin Islands; and **IVE A. SWAN,** Judge of the Territorial Court, Sitting by Designation

ATTORNEYS:

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Attorney for Appellant.

Vallarie Gillard
Appellee, pro se.

MEMORANDUM OPINION

PER CURIAM

Following a hearing on the appellee's petition for a

restraining order, the Territorial Court found the appellant had committed an act of domestic violence and granted the appellee's request for injunctive relief. Appellant now challenges the trial court's determination that he committed an act of domestic violence, arguing the element of an intent to injure was not established. For the reasons stated herein, the Territorial Court's decision will be **AFFIRMED.**

I. FACTS AND PROCEDURAL POSTURE

The facts of this case may be briefly stated as follows.[1] Appellee, Vallarie Gillard ["Gillard" or "Appellee"], and appellant, Allanton Brown[2] ["Brown" or "Appellant"], together had a child who was two years old at the time of the action from which this appeal arose. [Appendix of the Appellant["App."] at 4,6]. Both parties agree they were involved in a dispute surrounding their child, although they disagree on the nature and extent of that dispute. As a result of that incident, however, Gillard brought an action for permanent restraining order in the

[1] The appellee has not filed an appellate brief, nor has the Government intervened on her behalf, despite an order from this court permitting the opportunity to do so. [Order dated Jan. 9, 2001]. Therefore, the facts are derived solely from the appellant's brief and the record generated below.

[2] This is how the appellant's name appears throughout the court's record. However, both the trial judge and appellant noted at trial that his correct name is "Allenton Browne." [App. at 9]. However, for consistency, this opinion will utilize the spelling used in the court's records.

Territorial Court. That court scheduled a hearing on the petition, at which both parties appeared without an attorney and testified on their own behalf. At that hearing, the facts surrounding the incident were very much in dispute.

Gillard testified that, after going to the Emergency Room for medical care, she learned it was necessary to be hospitalized for treatment. [App. at 4-5]. While at the hospital, she contacted Brown to have him pick up their child from the babysitter and keep the child in his care during her hospitalization. [App. at 4]. Brown complied with that request. [*Id.*]. During her week-long hospitalization, Gillard alleged Brown refused to accept any of her calls, made to check on their young child, or to return her messages. [*Id.*]. Upon her release, Gillard said she went to Brown's home to pick up their child; however, once there, she contends Brown refused to answer her calls from the gate.

> I came out the hospital and I went to his house. He was by the blinds peeping. He wouldn't answer, so I open the gate and ask the gentleman to drive in the yard.

[App. at 5]. Because of his failure to respond, Gillard testified she entered the property, but first picked up a nearby 2x4 (piece of wood) to ward off Brown's vicious dog before proceeding to the door.

> I went and knock on the door. And they have dogs there, but he always says that the black dog, you must be taking a chance with it; he will attack you even though he knows you. So, I take up a 2x4 and knocking [sic] on the door. At the same time I knock on the door and he ask me what you want? What you want?

[*Id.*]. Gillard alleged that in response to her requests, Brown told her he was not returning their child to her. [App. at 5]. Gillard said she then attempted to go toward the room to get her child, and that it was at this point that the assault occurred:

> So I – as I was going towards the room, he grab me by my throat and started choking me and pushing me out of the house and I respond and I knock him back. And we started to fight and I scratch him in the house. He push me out and tell me I am not getting the child.

[Id.]. Gillard used a nearby phone and contacted police immediately after the incident. [*Id.*]. There were no reports of actual injury and the court made no findings to that effect, although there is some mention in the record by Gillard of such injury.

Brown's version of events differed significantly from the appellee's with regard to the extent of any contact with the appellee and whether he had the requisite state of mind at the time of the incident to constitute assault and battery. He acknowledged living in a "high security" setting which includes several tiers of security dogs to prevent anyone from entering the driveway. [App. at 9-10]. While he acknowledged the presence

of vicious dogs in his yard, Brown disputes that the stick which Gillard carried was for the purpose of warding off the dogs. Rather, he says Gillard came to his home in an aggressive manner and picked up the 2x4 wood from his garden near the entrance to his home, only after safely getting past the first and second security dogs stationed along the driveway. [App. at 10]. He alleged Gillard knocked violently on his door with the 2x4 before forcing herself into the open door. [App. at 10-11].

> And then when I open the door, kind of ajar the door [sic], I ask her what happened, why you doing this. She force herself into the door and I closed the door because she was coming through with a force. There wasn't a fight. There wasn't anything like that between me and her that I actually had to close the door because of her behavior.

[App.at 11]. Brown denied ever pushing or choking the appellee.

Brown attempted to present testimony of one witness, identified in the record only as "Ms. Beaumont", whom he claimed was at his home on the day of the incident. However, the trial court did not permit that witness to testify, noting her testimony would have carried little weight as she, too, had previously secured a restraining order against Brown. [App. at 16]. Thus, the only testimony on the record was that of Brown and Gillard.

Following the hearing, the Territorial Court granted the motion for a permanent restraining order, finding that Brown had subjected the appellee to an assault and battery. This appeal followed.

II. DISCUSSION

A. Jurisdiction and Standard of Review

This Court has jurisdiction to review final orders in civil cases. *See*, V.I. CODE ANN. tit. 4, V.I.C. § 33 (1997). "In reviewing the grant of preliminary or temporary injunctive relief, the appellate court is limited to determining whether there has been an abuse of discretion, an error of law, or a clear mistake on the facts." *Moorhead v. Farrelly*, 727 F.Supp. 193, 200(D.V.I.App.Div. 1989)(citing *Ecri v. McGraw-Hill, Inc.*, 809 F.2d 223, 226 (3d Cir. 1987)). Errors of law are subject to plenary review; however, the court's determination that an act of domestic violence occurred is a question of fact, which may be reversed only if clearly erroneous. *Id.;see also, Drew v. Drew*, 971 F. Supp. 948, 950 (D.V.I. App. Div. 1997), *aff'd.*,176 F.3d 471 (3d Cir. 1999). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. Delerme*,

457 F.2d 156, 160 (3d Cir. 1972); *see, also, Concrete Pipe & Prods v. Const. Laborers Pension Trust*, 508 U.S. 602(1993).

B. The Trial Court's Finding of Domestic Violence Was Not Clear Error.

Appellant first argues the evidence did not establish an intent to injure the victim, an essential element of assault and battery.

An action for restraining order is a civil action, and the complaining party, therefore, bears the burden to prove the facts entitling her to relief by a preponderance of the evidence. V.I. CODE ANN. tit. 16, § 97 (a) (1996); *Drew*, 971 F. Supp. at 950-51. Appellee sought a restraining order pursuant to title 16, sections 91 and 96 of the Virgin Islands Code, which permit such relief where there is an assault and battery upon a person with whom the perpetrator has an intimate relationship, as defined in the statute.[3] The domestic violence statute does not define "assault and battery"; therefore, we turn elsewhere in the Code for guidance. *See, Liberty Lincoln-Mercury, Inc. v. Ford Motor Co.*, 171 F.3d 818, 823 -824 (3d Cir.1999)("When the ordinary

[3] The statute protects persons from specific acts of violence by a: "spouse, former spouse, parent, child, or any other person related by blood or marriage, a present or former household member, a person with whom the victim has a child in common, or a person who is, or has been, in a sexual or otherwise intimate relationship with the victim." 16 V.I.C. § 91 (c).

meaning of a statute and the statute's legislative history fail to provide sufficient guidance to a term's meaning, sound principles of statutory construction instruct the Court to look to other statutes pertaining to the same subject matter which contain similar terms.")(citing 2B NORMAN J. SINGER, SUTHERLAND ON STATUTORY CONSTRUCTION §§ 51.01-51.03 (5th ed.1992)). The criminal code defines "assault and battery" as:

> "[A]ny unlawful violence upon the person of another with intent to injure him, whatever be the means or the degree of violence used . . . ."

14 V.I.C. § 292 (1996). Thus, one seeking protection under section 91 bears the burden to prove the following elements by a preponderance of evidence: 1) that the perpetrator used violence against her; 2) that such acts were done with the intent to inflict injury, and; 3) that the violence was unlawful. *See, Government of the V.I. v. Frett*, 14 V.I. 315, 325 (Terr.Ct. 1978). It is well-settled that intent may be inferred from: 1) the facts and circumstances surrounding the act; 2) the situation of the parties; 3) the nature and extent of the violence; 4) the acts and declarations of the parties at the time; and 5) the objects to be accomplished. *See, Drew*, 971 F. Supp. at 951 (citing *Frett, supra*). Moreover, an intent to injure may also be inferred where the act committed is likely to cause such injury. *See, Frett*, 14 V.I. at 325; *Compare, Titan Indem. Co. v. Cameron*,

2002 WL 1774059,*9(E.D.Pa. 2002); *Jones v. Norval*, 279 N.W.2d 388, 390-92 (Neb. 1979)(intent inferred where actor "expect[s] or intend[s] the natural, normal consequences of his own intentional act"); *Puffer v. Dietrich*, 1994 WL 91185, *2 (Minn.App. 1994) (hitting and choking are dangerous acts from which intent to injure may be inferred).

Here, the trial court had before it conflicting testimony from the only two witnesses to the incident. Appellee alleged Brown grabbed her around the neck and choked her, before pushing her out of the house. Appellant's version of events leading up to the alleged assault, to some extent, supported the facts presented by the appellee. He took great pains to describe, in detail, his security system to the court and acknowledged the presence of the vicious dog which the appellee testified she was guarding against when she armed herself with the 2x4. [App. at 9-11]. However, Appellant argues the appellee armed herself with the stick, not to protect against those dogs, but rather in aggression toward him. He characterized his conduct as a mere attempt to close the door to keep Gillard from entering his home.[4]

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[4] Title 14, section 293 of the Virgin Islands Code excuses violence against another person under certain circumstances. That statute provides, in pertinent part:

(a) Violence used to the person does not amount to an assault or

> [W]hen I open the door, kind of ajar the door, I ask her what happened, why you doing this. She force herself into the door and I closed the door because she was coming through with a force. There wasn't a fight. There wasn't anything like that between me and her than I actually had to close the door because of her behavior.

[App.at 11].

> . . . I never even self lay a finger on this young lady. She came to my house with such a violent behavior and like that I end up being subjected to the terms by the Court for the things that she did to me.

[App. at 23](emphasis added).

Faced with two conflicting versions of events and having had the opportunity to view the demeanor of the witnesses, the trial

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> an assault and battery –
>
> > (4) in preventing or interrupting an intrusion upon the lawful possession of property, against the will of the owner or person in charge thereof;
> > (6) in self defense or in defense of another against unlawful violence offered to his person or his property.
>
> (b) In all cases mentioned in subsection (a) of this section, where violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose.

14 V.I.C. § 293(a)(4). This language is qualified by section 294, which specifies that, "No verbal provocation justifies an assault and battery." *Id.* at § 294. As with all other affirmative defenses, the person claiming the defense of lawful violence bears the burden of proof on that issue. *See, e.g., Clarke v. Bruckner,* 93 F.R.D. 666, 668 (D.V.I. 1992).

Brown now argues that any physical contact he had with the appellee during the incident was merely an attempt to "restrain" her from entering his home. However, Brown did not raise that defense below. Rather, he altogether denied ever exacting any violence against the appellee and admitted to only closing the door after appellee forced her way into his home. Thus, the lower court had the opportunity to determine only whether to believe that the appellant used violence, in the form of choking and pushing, against the appellee. Because of appellant's complete denials, the issue of the lawfulness of any such violence was never put to that court and may not reviewed for the first time on appeal.

court resolved the credibility issue against the appellant and found that he had, indeed, committed an act of domestic violence. Implicit in this finding is the court's acceptance of Gillard's version of events - that there was a choking, coupled with pushing. An intent to injure may properly be inferred from such conduct, given the specific circumstances of this case.[5]

It is well-settled that credibility determinations are reserved to the trial court, which is uniquely positioned to view the witnesses' demeanor, particularly where the parties are the only witnesses and offer contradictory versions of the incident. *See, Delerme*, 457 F.2d at 160; *see, also, Georges v. Government of the V.I.*, 119 F.Supp.2d 514, 523 (D.V.I. App. Div. 2000). Moreover, the trial court's choice between two permissible views of the evidence does not constitute clear error warranting

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[5] Appellee had just been released from the hospital. Moreover, the trial court had before it testimony regarding longstanding disputes between the parties. By his own admission, the appellant had a contentious relationship with the appellee and ongoing disputes regarding the care of their child. Indeed, appellant acknowledged this fact during his testimony at the hearing, noting that the two had been before the trial judge on prior occasions.

> Now, the next thing I want to let you know, every time I have ever been in this court in front of you even for different situations, she have been the one that have provoked it, start it or have created the scenario for me to end up in here. Anytime she show up is trouble.

[App. at 11].

reversal. *See, Durham Life Ins. Co v. Evans*, 166 F.3d 139, 147 (3d Cir. 1999).

III. CONCLUSION

Testimony that appellant subjected the appellee to pushing and choking, under the specific facts of this case, was sufficient evidence from which the trial court could have found it more likely than not that the appellant committed an act of domestic violence and bore the requisite intent to injure the appellee. In view of the foregoing, and coupled with appellant's complete denial of the acts and concomitant failure to establish that any violence against the appellee was lawful under Virgin Islands law, the trial court's determination that an act of domestic violence occurred was not clearly erroneous and will be **AFFIRMED.**

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Attorney for Appellant.

Vallarie Gillard
Appellee, pro se.

ORDER

PER CURIAM

For the reasons stated in an accompanying Memorandum Opinion

of even date, it is hereby

ORDERED that the trial court's finding that the appellant committed an act of domestic violence, warranting an order of preliminary injunction, is **AFFIRMED.**

SO ORDERED this **21st day of January, 2003.**

ATTEST:
WILFREDO F. MORALES
Clerk of the Court

By:_____
Deputy Clerk